

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

REMARKS

Applicants thank the Examiner for reviewing the present patent application. Newly filed claims 25-27 are supported by the specification as originally filed and, for example, at pages 7 and 8. Moreover, the independent claims require that the product comprise at least one booster. New claims 25-27 clarify that up to five boosters may be used. In this regard, no new issues are presented that require further searching. In view of, at the very least, pages 7 and 8 of the specification, no new matter has been added and the amendments comply with 35 USC §132.

I. Claim Qualifier

Applicants appreciate the Examiner's comment regarding claim 16. The same is now correctly identified as a previously presented claim.

II. Rejection Under 35 USC §103

The Examiner has yet again rejected claims 1-2, 4-7, 9-12, 14-15, 17 and 19-24 under 35 USC §103 as being unpatentable over Soares et al., U.S. Patent No. 5,914,116 in view of Nakatsu et al., U.S. Patent No. 5,965,518 and further in view of Liu et al., U.S. Patent No. 5,976,555 and Blank et al., U.S. Patent No. 5,605,894 (hereinafter, '116, '518, '555 and 894, respectively). In the rejection, the Examiner again mentions, in summary, that the '116 reference teaches a method for a skin treatment regime and product that includes a first composition containing at least one active to impart a first

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

skin benefit and a second composition that includes a second and different active that imparts a second benefit to skin. The Examiner continues and again mentions that the '116 reference teaches that the first and second compositions are stored in respective separate containers which are joined together. The Examiner further continues and mentions that separate and joined containers are described in the '116 reference and that the '116 reference provides examples of first compositions and second compositions where the first composition is a cleanser and the second composition is an anti-acne preparation and also where the first composition is sunscreen and the second composition is an anti-wrinkle cream.

The Examiner notes on the record that the '116 reference fails in every way to disclose a second composition comprising a retinoid booster like citral, citronellal, etc. as recited in the claims. Moreover, the Examiner yet again admits that the '116 reference fails to specifically teach that a compartment having a composition with retinoid should keep the retinoid composition out of contact with oxygen. The Examiner also notes that the '116 reference fails to disclose the amount of each composition recommended for use. Finally, the Examiner correctly admits that the '116 reference fails to teach that the two-compartment system is designed to prevent booster enhanced destabilization of the retinoid as set forth in the presented independent claims.

In an attempt to "cure" the vast deficiencies of the '116 reference, the Examiner continues to rely on the '894 reference and essentially concludes that the amount of active and frequency of application is a matter of personal preference dependent on personal needs. The Examiner relies on the '518 reference and states that the same discloses a fragrance composition that includes non-aromatic terpenoid compounds such as citral, citronellal, geranial and linalool and that the composition is suitable for

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

various products for topical application to skin and can be used in topical formulations such as sunscreens.

Thus, the Examiner believes that one of ordinary skill in the art, at the time the invention was made, would have found it obvious "to provide" from about 1 to 5 ml of the first composition and second composition when used "in the" compositions of the '116 reference because the '894 reference describes a composition for regulating wrinkles and/or atrophy in mammalian skin safely with use and depending on personal needs.

The Examiner also mentions that one skilled in the art at the time of the invention would have found it obvious to use the fragrances described in the '518 reference in the compositions described in the '116 reference. The Examiner believes the claimed boosters are taught and believes the references of record describe products that are identical or substantially identical in structure. The Examiner concludes the amount of fragrance employed would have been obvious to the skilled artisan since varying and optimizing would be consistent with the guidance provided in the '518 reference and optimum or workable ranges are obtainable via routine experimentation.

The Examiner continues and believes that the '116 and '518 references render obvious a product with first and second compartments.

Nevertheless, the Examiner admits on record that the combination of the teachings of the '116 reference and the '518 reference does not render the claimed invention obvious since it does not describe providing a compartment that keeps retinoid containing compositions out of contact with oxygen. The Examiner continues to rely on the '555 reference and states that the same describes that the oxidation of skin care

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

compositions can be reduced by excluding oxygen permeation, and particularly, by fabricating container walls from aluminum. The Examiner also mentions that the '116 reference teaches that two compositions in different compartments are kept separate because single formulations often compromise the performance of combined actives. In this regard, the Examiner concludes the prevention of booster enhanced destabilization of retinoid is obvious. Moreover, the Examiner notes that use of a composition gets no patentable weight.

In view of the above, the Examiner continues to believe the obviousness rejection made under 35 USC §103 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position, again, that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Independent claim 1, as presented, is directed to a stable skin care product comprising:

a first composition comprising about 0.001% to about 10% of a retinoid selected from a group consisting of retinyl esters, retinol, retinal and mixtures thereof;

a second composition comprising about 0.0001% to about 50% of at least one retinoid booster selected from the group consisting of CITRAL, CITRONELLOL, COCAMIDE DEA, DAMASCONE, GERANIOL, 18b GLYCERHETINIC ACID, 8 OH QUINOLINE, N LAURY SARCOSINE, LINALOOL, ALPHA IONONE and LINSEED OIL;

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

a first compartment for storing the first composition and isolating the first composition from the second composition, wherein the first compartment keeps the first composition out of contact with oxygen; and

a second compartment for storing the second composition and isolating the second composition from the first composition, the first and second compartments being joined together,

the first composition not being chemically degraded by the second composition and not coming into contact with the second composition when being stored in the first compartment to prevent booster enhanced destabilization of retinoid wherein the second composition potentiates the action of the retinoid upon contact.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, that at least two retinoid boosters may be employed, and that skin may be conditioned with the compositions packaged in the products described in claim 1. Claim 19 further defines the stable skin care product as one where the first and second compositions are compositions utilized simultaneously. Claim 22 further defines the stable skin care product as one where from about 1 to about 5 ml of the first and second composition are used. New claim 25 characterizes the invention of claim 1 in that up to five boosters may be employed.

Claim 1 as presented characterizes the product as one which prevents booster enhanced destabilization of the retinoid.

Independent claim 6, as presented, is directed to a stable skin care product comprising:

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

a first composition comprising about 0.01% to about 1% of a retinoid to provide a first benefit; said retinoid selected from a group consisting of retinyl esters, retinol, retinal, and mixtures thereof;

a second composition comprising about 0.0001% to about 50% of at least one retinoid booster to boost the first benefit;

said retinoid booster selected from the group consisting of CITRAL, CITRONELLOL, COCAMIDE DEA, GERANIOL, 18b GLYCERHETINIC ACID, 8 OH QUINOLINE, N LAURY SARCOSINE, LINALOOL, and LINSEED OIL;

a first compartment for storing the first composition and isolating the first composition from the second composition, wherein the first compartment keeps the first composition out of contact with oxygen; and

a second compartment for storing the second composition and isolating the second composition from the first composition, the first and second compartments being joined together;

the first composition not being chemically degraded by the second composition and not coming into contact with the second composition when being stored in the first compartment to prevent booster enhanced destabilization of retinoid wherein the second composition potentiates the action of the retinoid upon contact.

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

The invention of claim 6 is further defined by dependent claims which claim, among other things, that at least two retinoid boosters may be employed and that the compositions within the skin care product can condition skin. Claim 20 further defines the invention of claim 6 in that the first and second composition are compositions utilized simultaneously. Claim 23 further defines the stable skin care product where from about 1 to about 5 ml of first and second composition are used. New claim 26 characterizes the invention of claim 6 in that up to five boosters may be employed.

Independent claim 6 characterizes the product as one which prevents booster enhanced destabilization of the retinoid.

Independent claim 11, as now presented, is directed to a stable skin care product comprising:

a first composition comprising about 0.001% to about 10% of a retinoid to provide a first benefit; said retinoid selected from a group consisting of retinyl esters, retinol, retinal, and mixtures thereof;

a second composition comprising about 0.0001% to about 50% of at least one retinoid booster to boost the first benefit;

said retinoid booster selected from the group consisting of CITRAL, CITRONELLOL, Climbazole, COCAMIDE DEA, DAMASCONE, GERANIOL, 18b GLYCERHETINIC ACID, 8 OH QUINOLINE, N LAURY SARCOSINE, LINALOOL, ALPHA IONONE and LINSEED OIL;

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

a first compartment for storing the first composition and isolating the first composition from the second composition, wherein the first compartment keeps the first composition out of contact with oxygen; and

a second compartment for storing the second composition and isolating the second composition from the first composition, wherein the second compartment keeps the second composition out of contact with oxygen;

further wherein the first, second or both compartments comprise aluminum;
and the first and second compartments are joined together;

the first composition not being chemically degraded by the second composition and not coming into contact with the second composition when being stored in the first compartment and the second composition potentiates the action of the retinoid upon contact.

Claim 11 is further defined by the dependent claims which claim, among other things, that at least two retinoid boosters may be used and that the compositions within the product of claim 11 can condition skin. Moreover, claim 11 is further defined in that specific combinations of boosters are described, and that the first and second composition may be used simultaneously. Claim 24 further defines the stable skin care product where from about 1 to about 5 ml of first and second composition are used. Claim 27 characterizes the invention of claim 11 in that up to five boosters may be employed.

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

Claim 11, as presented, characterizes the product as one which prevents booster destabilization of retinoid.

In contrast, and as already made of record on numerous occasions, the '116 reference only discloses a first and second composition stored in separate containers joined together. The product described in the '116 reference includes a first composition for obtaining a first skin benefit and second composition for obtaining a second and different skin benefit wherein first and second actives in the compositions (respectively) yield benefits that are different from one another, and the two compositions are part of a regime that teaches or fosters applications at different times of the day (please see col. 2, lines 1-5). Contrary to the presently claimed invention, nothing in the '116 reference even remotely suggests a stable skin care product that has two compositions that are isolated from each other in different compartments prior to use. Claims 19 and 20 further define the present inventions of claims 1 and 6 in that the compositions are meant to be used simultaneously so that the second may boost the effect of the first. Claims 22-23 define an amount to be used. The first composition is kept in a compartment out of contact with oxygen and the first composition is not chemically degraded by the second composition and not coming into contact with the second composition when being stored in the first compartment. As set forth in independent claim 1, as now amended, the second composition potentiates the action of retinoid upon contact with the first composition. Nowhere, in the '116 reference is such a product even remotely suggested. In fact, the '116 reference merely describes a skin treatment regime requiring application of multiple separate compositions that can be sold in a single unit to serve as a reminder for joint usage and to also educate the consumer of proper application thereof. Again, no composition described in the '116 reference boosts the performance of the other. As amended, it is clear that the

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

invention protects retinoid from booster prior to use but that booster enhances the performance of the retinoid when product is used. The same is true and required of the stable skin care products described in independent claim 6 and independent claim 11 as amended herein.

Again, none of the vast deficiencies of the primary references, namely the '116 reference, are even remotely cured by the '518 reference since the '518 reference only discloses fragrance compositions having antimicrobial activity. The concept of isolating a composition with a retinoid booster from a composition with a retinoid in a dual compartment package is not even remotely addressed in the '518 reference. Turning to the '555 reference, the same only shows topical water-in-oil emulsions with retinoids. Again, isolated compositions that may be used simultaneously whereby one boosts the performance of the other is not taught in the references relied on. The '894 reference cures none of the deficiencies of the '116 reference since the latter is merely directed to wrinkle or atrophy regulating compositions having a topical carrier with anti-inflammatory agents. No combination of references even remotely describes the use of up to five boosters as claimed.

The combination of references relied on by the Examiner does not, even remotely, suggest stable skin care products having two compositions that are isolated from each other in two compartments wherein the first composition has a retinoid that is kept out of contact with oxygen and that is boosted by the composition in the second compartment when the second composition is in contact with the first composition and further where the first composition is not chemically degraded by the second composition during storage. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed inventions, as presented and amended, are not even remotely

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

described in the combination of references relied on by the Examiner. Therefore, Applicants, again, respectfully request that the obviousness rejection be withdrawn and rendered moot.

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

III. Rejection Under 35 USC §103

The Examiner has yet again rejected claim 18 under 35 USC §103 and alleges that the same is obvious and unpatentable over Suares et al., U.S. Patent No. 5,941,116 (hereinafter, '116) in view of Nakatsu et al., U.S. Patent No. 5,965,518 (hereinafter, '518) and further in view of Liu et al., U.S. Patent No. 5,976,555 (hereinafter, '555) and Blank et al., U.S. Patent No. 5,605,894 (hereinafter, '894) as applied to claims 1-2, 4-7, 9-12, 14-15, 17 and 19-24 above and further in view of Kobayashi, JP 04183797 (hereinafter, '797). In the rejection, the Examiner concludes, in summary, that the '116, '518, '555 and '894 references are relied on for the reasons set forth above. The Examiner has admitted on the record that the references do not specifically recite the retinoid booster as disclosed in claim 18, and however, the Examiner continues to rely on the '797 reference for describing ionone for use in cosmetics. In view of this, the Examiner continues to believe that the rejection to claim 18 under 35 USC §103 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position, again, that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record on numerous occasions, none of the references relied on by the Examiner in any combination even remotely describe a stable skin care product as described in the independent claims as presented. This is true because the references relied on by the Examiner do not describe a dual component system that has two separate compositions isolated from each other wherein the first composition is also kept out of contact with oxygen. Moreover, the references relied on by the Examiner do

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

not describe a first composition that is not chemically degraded by a second composition when being stored in the first compartment and further wherein the second composition potentiates the action of retinoid in the first composition upon contact. Therefore, none of the important and critical limitations set forth in the presently claimed invention are even remotely found in the combination of references relied on by the Examiner, and claim 18 is dependent on claim 1.

The deficiencies of the references relied on by the Examiner are not cured by the '797 reference since the same merely describes ionone perfumes in compositions like cosmetics and solid soaps. In view of this, Applicants, again, respectfully request that the obviousness rejection to claim 18 be withdrawn and rendered moot.

III. Rejection Under 35 USC §103

The Examiner has yet again maintained the rejection of claim 16 under 35 USC §103 as being unpatentable over Soares et al., U.S. Patent No. 5,914,116 (hereinafter, '116) in view of Nakatsu et al., U.S. Patent No. 5,965,518 (hereinafter, '518) and further in view of Liu et al., U.S. Patent No. 5,976,555 (hereinafter, '555) and Blank et al., U.S. Patent No. 5,605,894 (hereinafter, '894) as applied to claims 1-2, 4-7, 9-12, 14-15, 17 and 19-24 above, and further in view of Kobayashi, JP 04183797 (hereinafter, '797) and Pillai et al., U.S. Patent No. 5,582,832 (hereinafter, '832). In the rejection, the Examiner mentions, in summary, that the rejection to claims 1-2, 4-7, 9-12, 14-15 and 17 are made in view of the '116, '518, '555 and '894 references. The Examiner, again, relies on the '797 reference for reasons which appear to be the use of perfumes in cosmetic compositions and the '832 reference for describing compositions that use suitable

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

azoles like climbazole when treating skin. In view of this the Examiner continues to believe that claim 16 is appropriately rejected under 35 USC §103.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position, again, that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Again, and as already made of record on numerous occasions, independent claim 11 is directed to a stable skin care product that comprises a first composition and a second composition where the first composition is kept out of contact with oxygen and stored in a first compartment and the second composition is stored in a second compartment whereby the first composition and second composition are not in contact during storage.

The invention of claim 11 is further defined in that the first composition does not chemically degrade the second composition during storage and further wherein the second composition potentiates the action of the retinoid in the first composition upon contact. Nowhere in the combination of references relied on by the Examiner is such a stable skin care product even remotely described. Again, since the '832 reference merely describes the use of climbazole formulated into compositions with sunscreen, the '832 reference does not cure any of the vast deficiencies of the prior references relied on by the Examiner. The combination of references relied on by the Examiner does not describe a stable skin care product having a dual compartment system where the first composition is in the first compartment and the second composition is in the second compartment such that the second composition potentiates the action of retinoid in the first composition upon contact. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. Since a *prima facie* case of

Attorney Docket No.: J6666(C)
Serial No.: 10/007,869
Filed: November 8, 2001
Confirmation No.: 6511

obviousness has not been established, Applicants, again, request that the obviousness rejection to claim 16 be withdrawn and rendered moot.

Regarding the Examiner's response to Applicants' arguments, the same, respectfully, are a repeat of the rejection which Applicants have responded to.

Applicants submit that all claims of record are now in condition for allowance. Applicants, again, further submit that they welcome suggestions from the Examiner so that an Appeal may be avoided.

Applicants are prepared to take this application on Appeal. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions concerning the present patent application, she is kindly invited to contact the undersigned at her earliest convenience.

Respectfully submitted,

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